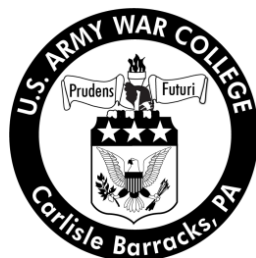


Strategy Research Project International Fellow

Territorial Disputes in Spratly: An Assessment of the Philippine Initiatives

by

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United States Army War College
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The South China Sea is the subject of conflicting territorial claims among China, Philippines, Vietnam, Brunei, Malaysia, and Taiwan. While most past confrontations among the claimants took place in words, recent events indicate that acts, and even military standoffs, are taking centre stage in the South China Sea territorial disputes. This dangerous development has caused diplomatic rows among claimant countries. The most-concerned factor is by all means a rising and more assertive China. Unfortunately, the Philippines is perhaps the first to stand test of China's massive claims in the South China Sea. Given the emerging regional security environment in the South China Sea, there is a need for the Philippines to assess its initiatives on how it is dealing with the maritime dispute in order to make logical and intelligent recommendations and actions that will gain the respect of the other claimants, contribute to maintaining peace and regional solidarity, and protect its territorial integrity and sovereignty. This paper discusses complex territorial dispute issues that need careful analysis and assessment to avert potential armed confrontation among concerned countries.

Territorial Disputes in Spratly: An Assessment of the Philippine Initiatives

The South China Sea, the geographical meeting place of Southeast Asia, China, and the Indian subcontinent, joins the Southeast Asian states with the Western Pacific, thus, functioning as the throat of global sea routes in this region.¹ It is an area with hundreds of reefs, islets, rocks and shoals, with the majority located in the Spratly and Paracel chain of islands, all of which are the subject of conflicting territorial claims among China, Taiwan, and four Association of Southeast Asian Nations (ASEAN) members – Philippines, Vietnam, Brunei, and Malaysia.

The overlapping maritime claim in the South China Sea is feared to be “one of Asia’s potential military flashpoints and tensions have escalated over the past year.”² The recent events have shown the escalation of military activities in the area and have caused diplomatic rows among claimant countries. Ensued in the middle of this security environment is the Philippines, which is facing the overt aggressiveness of the emerging superpower that is China. Given the nature of the Spratly dispute as a potential flashpoint and the emerging regional security environment in the South China Sea, there is a need for an assessment of the Philippine initiatives for the preservation of peace and stability in the region, being one of the countries that has a major stake in the area.

This paper will delve into the Spratly issue as a potential flashpoint in the region considering the strategic importance of the Spratly Islands, the conflicting claims of six nations including China which is becoming aggressive, and the strategic role of the United States in the region. The focus of this paper is the evaluation of the measures being undertaken by Philippines in the preservation of peace and stability in the Spratly

Islands while continuously asserting its claim on the Kalayaan Island Group (KIG). While the paper will discuss the “ASEAN Way” or the multilateral approach to the Spratly dispute, it will just deal with the matter as one of the Philippine initiatives to address this issue. The paper will not focus on providing a uniform option for the resolution of the dispute as the recommendations that will be presented are specific for the Philippines, which may or may not be applicable for other parties in the dispute.

The Spratly

The Spratly Islands is a mini-archipelago in the South China Sea’s south-eastern part comprised of more than 100 small islands or reefs which are surrounded by rich fishing grounds and potentially contain gas and oil deposits. The chain of islands is wholly and partly claimed by China, Vietnam, Taiwan, Brunei, Malaysia, and the Philippines. The claimant countries are fighting for the fishing rights, exploration of oil and gas deposits, and the islands themselves. The fight for sovereignty over the Spratly Islands over the past decades has led to numerous military skirmishes, harassment and detention of fishermen, a series of diplomatic rows, and travel bans, as well as strains on economic relations.

The South China Sea is undoubtedly an important sea lane with more than half of the world’s supertanker traffic passing through the region’s waters.³ It is now being seen as an important guarantor of economic strength for the countries surrounding it. With “roughly two-thirds of South Korea’s energy supplies, nearly 60 percent of Japan’s and Taiwan’s energy supplies and about 80 percent of China’s crude-oil imports come through the SCS”,⁴ any havoc in the area that impedes the passage of the much-

needed oil would cause disruption in the economies of said nations and the region as well.

Another reason for the claimants to establish their foothold on the Spratly Islands is the vast reserves of oil and natural gas thought to be deposited in the seabed of the disputed water which claimant countries need to support their economy. According to Wang Yilin, head of China National Offshore Oil Corporation (CNOOC), the “region could have as much as 17 billion tonnes of oil and 498 trillion cubic feet of natural gas” which is enough “to fulfill China’s gas needs for more than a century.”⁵ Additionally, the area is a rich fishing ground, a haven of maritime ecosystems which sustain the seafood supply of the surrounding states.

Furthermore, ownership of islands in contested maritime area is considered as an important part of having control of the sea. The Spratly Islands could serve as a military outpost to the nation that controls it. The islands are potential locations of navy and air bases for surveillance activities and military operations.

Historical Claim

Vietnamese claims are based on the continental shelf principle and on history, using archaeological evidence to bolster sovereignty claims. It was France that claimed the Spratly Islands (Truong Sa) and the Paracel Islands in the 1930's and included the islands in the territory of Vietnam while the latter was still part of its colony.⁶ The entire Spratly Islands are an offshore district of the province of Khanh Hoa while the Paracel Islands were seized by China in 1974.

Brunei does not have an explicit claim on any of the islands, but “claims a maritime boundary extending as far as a median with Vietnam” as part of its continental

shelf.⁷ Brunei declared its maritime boundary with Vietnam an Exclusive Economic Zone (EEZ) in 1984, thus, “asserting an implicit claim to Louisa Reef”.⁸ It is the only country among the claimants that does not have troops based on the archipelago.

Malaysia has laid claims to the Spratly Islands following its issuance of a map in 1979 based upon the continental shelf principle. It has occupied three islands that it considers to be within its continental shelf since 1983.⁹

China practically claims the whole South China Sea. For China, the South China Sea is a “core national interest.”¹⁰ China regards this region as an integral component of its territory and a necessary part of its image as an emerging superpower. In 1947, China produced a map with nine undefined dotted lines, and claimed all of the islands within those lines.¹¹ China calls the Spratly the “Nansha Islands” and asserts that it has ample jurisprudential evidence to back up such claim.¹² Using historical ownership, China reasserts its claim to the Spratlys for its “need of natural resources and the desire to exert a leadership role in the region.”¹³

Taiwan's claims are similar to those of China. In 1955, Taiwan claimed and occupied Itu Aba (Taiping Dao), the largest single island among the Spratly Islands. Since Taiwan's occupation, a 1,150-meter runway was built on the fortified island and the Coast Guard Administration forces have been responsible for the protection and safeguarding of the island.¹⁴ The island could serve as a military base in case of war.

The Philippines is claiming only a portion of the Spratly Islands, known as the Kalayaan Island Group (KIG). Kalayaan is a fifth-class municipality in the province of Palawan which contains only one village, Barangay Pag-asa. The Kalayaan has a 1.3-kilometer airstrip that is used both by the military and civilians. Most of the Filipino

residents there are fishermen. The claim over the KIG was first made in 1956 by Tomas Cloma who called the islands “Freedomland”. The sovereignty of the Philippines over KIG rests upon Presidential Decree (P.D.) 1596 signed on 11 June 1978 by then President Ferdinand Marcos, and the Republic Act No. 9522, or the Philippine Archipelagic Baselines Law signed in 2009. By virtue of P.D. 1596, the Philippines claims the eight islands comprising the KIG as part of Philippine territory on the basis of historic rights and legal titles.¹⁵

Governing Instruments

The UN Convention on the Law of the Sea (UNCLOS) states that “countries with overlapping territorial claims must resolve them by good faith and negotiations.”¹⁶ The Philippines signed it on May 8, 1984, while China signed it on June 7, 1996. However, UNCLOS has not yet resolved ownership disputes in the South China Sea because of China’s hesitation to solve the dispute in a multilateral setting, intervention from a third party or international mediation. China maintains its position to resolve the issue only through bilateral negotiations with other claimant countries.

Another important document which tackles the maritime dispute in the South China Sea is the Declaration on the Conduct of Parties in the South China Sea (DOC). It was adopted by the Foreign Ministers of the ASEAN and the People’s Republic of China during the 8th ASEAN Summit in Phnom Penh, Cambodia on November 04, 2002. The purpose of the DOC is to “promote peaceful, friendly, and harmonious environment in the South China Sea between ASEAN and China to enhance peace, stability, and economic growth and prosperity in the region.”¹⁷ It was hoped to serve as a framework for future talks on the maritime disputes and an initial step towards the

framing of a code of conduct based on the “principles of self-restraint and peaceful settlement.”¹⁸ However, for the past 10 years, a legally-binding code of conduct is still being sought to prevent further military skirmishes among claimant countries.

The Rise of Maritime Security Issues

In addition to maritime row over the Spratly Islands, the South China Sea is also the location of the disputed Paracel Islands and Scarborough Shoal. The Philippines and China have been in a standoff over Bajo de Masinloc or Panatag Shoal, internationally named Scarborough Shoal (Huangyan Island in China), since April 08, 2012. The Philippine Navy found eight Chinese fishing vessels were harvesting endangered marine species.¹⁹ However, two Chinese maritime surveillance ships prevented the Philippine Navy from arresting the Chinese fishermen. Since then, the Philippine Navy and Coast Guard have been patrolling the area to conduct reconnaissance.²⁰

The establishment of Sansha as a city of China further makes the South China Sea volatile.²¹ With the establishment of Sansha City, China is annexing the Spratly as its territory. According to Beijing, Sansha City will administer three disputed islands namely Paracels (Xisha), Macclesfield Bank (Zhongsha), and Spratly (Nansha).²² In response, the Philippines filed a diplomatic protest with China on July 24, 2012 and did not recognize Sansha City as it covers the KIG.²³ Vietnam also took a strong stance against the establishment of Sansha City.

Of all the territorial claims in the South China Sea, the dispute between Vietnam and China over the Paracel islands is the most likely to lead to armed conflict. This is due to the history of the two countries having engaged in naval skirmishes in the South

China Sea in 1974 when the Chinese navy gained complete control of the Paracel islands, and in 1988 when the two fought again a brief naval battle in the Spratlys.²⁴

The maritime row between China and Japan over the Senkaku /Daioyu Islands in the East China Sea also affects the dynamic relations in the South China Sea. The tension started when the Japanese government bought three of the eight islands in Senkaku from private owners on September 12, 2012.²⁵ These uninhabited islands and rocks are believed to contain vast reserves of gas and oil, lie in important shipping lanes, and are located in a known fishing area.²⁶ Japan laid its claim to the islands in 1895 while China, as well as Taiwan, has said that these islands have been part of their territory since ancient times. However, China and Taiwan only pressed their claims in the 1970s when the prospect of abundant oil in the area emerged.²⁷

The Rise of China

It is the aggressiveness of China that leaves the most resounding impact upon the rest of the claimant countries and the international community. The whole South China Sea is acknowledged by the Chinese government as an eminent part of its national image and claims that it has “indisputable sovereignty” over the area.²⁸

As the region is adjusting to the rise of China as a world power, China is actively solidifying its presence in the South China Sea and making neighboring countries uneasy. China was able to build military outposts in the area claimed by the Philippines and Vietnam. Furthermore, during the standoff over the Scarborough Shoal in April 2012, China rejected Cavendish banana exports from the Philippines citing failure to pass quarantine tests and has imposed a tighter rule on incoming shipments, though

the banana industry in the Philippines had been exporting their goods to China for over a decade.²⁹

Aside from this, China imposed a tourism ban in 2012 against the Philippines. As a result, it is estimated that 1,500 Chinese visitors have cancelled their trips to the Philippines in 2012 amidst the escalating tension over the Scarborough Shoal.³⁰ China is the third largest trading partner and is the fourth largest source of visitors of the Philippines. These economic sanctions even if they were not labeled as Scarborough-related sanctions, are undoubtedly China's means to rattle the Philippines.

The aggressiveness of China can also be seen in its plan to make the disputed islands as tourist spots for local visitors. The 10-year tourism development plan for Sanya City includes the disputed Spratly Islands on a cruise route.³¹ The plan has again caused agitation among other states.

In November 2012, the Philippines, Vietnam and India protested when Beijing issued its new biometric passport with a Chinese map showing the South China Sea and part of the Indian borders as Chinese territories.³² Further, in December 2012, concerns were raised in the region and in the U.S. when Hainan province in China announced that its government would allow Chinese ships to search and repel foreign ships in the South China Sea.³³ Likewise, the European Union and Germany have expressed concern on the freedom of navigation in the South China Sea with China's new rule on boarding foreign vessels.³⁴ While the foreign affairs in Hainan clarified that Chinese police will only intercept foreign vessels who are engaged in illegal activities, it nonetheless suggests China's continuing assertiveness in its claim over the disputed

territory. However, a member of the Philippine Senator has said this move by China was “plainly a provocation and a muscle-flexing as an offshoot of U.S. pivot in Asia.”³⁵

Another consequence of the rising power of China is the ongoing arms race in the region. Most analysts predict that China will become the largest economy in the world this century, thus, it has the means and resources to support its military expenditure. According to Stockholm International Peace Research Institute, “China now ranks second behind the United States in total military spending with Beijing's 2011 defense budget at \$142.2 billion.”³⁶ China is now working on the build-up of its blue-water navy.

China’s aggressiveness has motivated other claimant countries to increase military investments. Southeast Asian countries are now building up their military capability with increase in defense budgets to acquire arms, naval and air equipment.³⁷ For example, the Philippines has started upgrading the capability of its military with the acquisition of the Navy’s first ever Hamilton³⁸ class cutter, from the United States Coast Guard in August 2011. Another Hamilton cutter is expected to be turned over to the Philippines by the U.S. government in 2013.³⁹ President Aquino, in his 2012 state of the nation address (SONA), said that the Philippines will equip the military for maritime defense with more than 40 military aircraft along with other weapons to be delivered in the next two years.⁴⁰ In November 2013, the Philippines is looking to acquire its first two missile frigates, Maestrale class frigates, from the Italian Navy which have anti-submarine capabilities and surface-to-air missiles.⁴¹

Meanwhile, Vietnam is set to receive all of the six Kilo-class submarines which Vietnam bought from Russia by 2016.⁴² The said submarines are the quietest

submarines in the world and are designed for anti-submarine and anti-ship warfare, general reconnaissance and patrol missions. The acquisition was a US\$2 billion deal signed by Prime Minister Nguyen Tan Dung during his visit to Moscow in December 2009.⁴³

As for Indonesia, the manufacture of three new submarines is already underway as part of strengthening its maritime border defense.⁴⁴ Currently, Indonesia has two German submarines in operations. Thailand, being a significant player in the region, also has submarine ambitions as seen in the early months of 2011 with the plan to buy decommissioned submarines from Germany but was out-bid by other countries.⁴⁵

The rising military power of China is drawing attention from other major powers especially the United States. Hence, the South China Sea dispute is not limited to the concerns and interests of the claimant countries. Freedom of navigation in and over-flight above the South China Sea are the concerns of non-claimant countries including the U.S. that have big stake in the area. During the 2011 East Asia Summit, “President Obama and the other leaders already called for a peaceful resolution of the dispute, following the rule of law and the UNCLOS.”⁴⁶

The U.S. has declared that it is in its national interest for “the maintenance of peace and stability, respect for international law, freedom of navigation, and unimpeded lawful commerce” in the South China Sea.⁴⁷ As part of the so-called “pivot to Asia” strategy, the U.S. will maintain bases in Japan and South Korea, deploy marines, navy ships and aircrafts to Australia’s Northern Territory, and will deploy 60% of its naval assets to the Asia-Pacific region by 2020.⁴⁸ Refuting the allegations that the shift of strategy is intended to counter China’s rise in the region, Deputy Secretary of Defense

Ashton Carter said that the rebalance is “about a peaceful Asia-Pacific region, where sovereign states can enjoy the benefit of security and continue to prosper”.⁴⁹ However, this U.S. shift of focus towards the Asia Pacific has been seen by the Defense Department of China as a “move not good for regional security and [one that] damages trust.”⁵⁰ Hence, the U.S. pivot to Asia-Pacific further complicates the dynamics in the tension-filled South China Sea dispute. As Dr. David Lai has argued, “there are many unsettled issues in the U.S.-China relationships, most of which are about the prospect of China’s projected rise and its impact on the U.S. and the U.S.-led international order.”⁵¹

Another implication of China’s strong economic and military presence in the regions is that it could undermine the solidarity of the ASEAN. With the ASEAN members’ economy deeply intertwined with that of China, economic relations with China are an important factor that affects the actions of the ASEAN members. China is said to have strong influence on Laos, Myanmar, and Cambodia – three of the impoverished members of ASEAN which consider China as an economic and political ally. China has given aid to these countries including loans, investments, scholarships, infrastructure projects, and tourism. Concerns have been expressed regarding the possibility of these three countries being swayed to support China in the South China Sea maritime dispute, pushing ASEAN into further division.

Cambodia was accused of supporting China in the maritime disputes while Myanmar and Laos supported Cambodia to keep the territorial dispute with China out of the 2012 ASEAN joint communiqué, preventing the passing of this communiqué. With the failure to pass a joint communiqué for the first time in the 45-year history of ASEAN,

accusations were hurled against Cambodia, chair of 2012 ASEAN meetings , for its alleged support of the interest of China in the maritime disputes. China has pledged more than \$500 million in soft loans and grants for Cambodia.⁵²

During the 21st ASEAN Summit in December 2012, Cambodian Prime Minister Hun Sen's statement that the 10 members of ASEAN agreed "not to internationalize" the dispute was openly refuted by President Aquino.⁵³ The failure of the regional bloc to make a common stand on the South China Sea dispute is a crippling factor to the initiative to have a united ASEAN stand in resolving the maritime row.

On the other hand, non-claimant states like Singapore, Thailand, and Indonesia are not keen on taking sides. Treating the maritime dispute as a "difficult issue", Singapore encourages moderation on all sides.⁵⁴ Singapore's Prime Minister Lee Loong called on all claimants to exercise restraint and for disputes to be resolved peacefully and in accordance with international law.⁵⁵ As a country whose economic bloodlines are the active sea lanes in the South China Sea, Singapore has been wary about the freedom of navigation and stability in the maritime area and has been careful to remain neutral.

In the case of Thailand, Prime Minister Yingluck Shinawatra said that as a non-claimant state, Thailand wants to help in solving the maritime dispute in the South China Sea.⁵⁶ As a coordinating country for the ASEAN-China relations, ASEAN members agreed to let Thailand hold an ASEAN senior officials' meeting to consider the code of conduct in the South China Sea as an attempt to solve the maritime dispute.⁵⁷

Having good relations with the US and China, Indonesia has been very active in patching up the disunity among ASEAN members. Indonesian Foreign Minister Marty

Natalegawa conducted “intensive shuttle diplomacy” in an effort to restore ASEAN unity following the failure to issue a joint communiqué.⁵⁸ Indonesia was delegated to circulate a draft of code of conduct to the other foreign ministers as part of preparations for the November 2012 ASEAN Summit.⁵⁹

Moreover, other major players in the region appear to have stayed neutral about the territorial dispute to protect their economic ties with China, especially Australia. Even if Australia is not one of the parties in the dispute, maintaining peace and stability in the South China Sea is one of its concerns. Australia views the United States as an important military ally but sees China as an indispensable economic partner. For these reasons, it is conceivable that Australia might take a neutral stand to keep its economic ties with China. In its economic policy blue print, “Australia in the Asian Century White Paper”, the goal of Australia is to become one of the world’s top 10 wealthiest nations by 2025, joining Qatar, Singapore, Hong Kong, Brunei, the United Arab Emirates, and the United States.⁶⁰ Furthermore, Prime Minister Julia Gillard said that Australia’s future will depend on its choices and engagements in the Asian region. Incidentally, China is Australia’s largest export market for iron ore and largest source of imports which include clothing, communications equipment, computers, prams, toys, games and sporting goods, furniture and televisions.⁶¹

Probable Future Scenarios

After analyzing the Spratlys as a potential flashpoint in the region, the rise of maritime security issues in the South China Sea, and the implications of the rising power of China, the following are the likely future scenarios in the area: First, there is a risk of miscalculations or accidents that could lead to limited confrontations. The existing

maritime disputes could lead to dangerous military confrontations considering the dark history of maritime confrontations in the contested areas. However, it is doubted that China can sustain military confrontations against all the countries with which it has maritime disputes without its economy suffering in the process. If China resorts to military action, other claimant countries may allow or call on the active intervention of the United States to balance the power of China.

Second, there is a perceived threat attendant to the increase in power-projection capabilities of China. China's strong military and healthy economy could make it an uncontested power in the region. With Asia's "energy consumption expected to double by 2030 with China accounting for half of that growth," China would conceivably protect its Middle Eastern energy supply which passes through the South China Sea as well as the energy resources that are said to be in the South China Sea area.⁶²

And lastly, the discovery of much-needed oil and other energy resources in the area may further raise the possibility of conflict but may also engender more joint economic endeavors for mutual benefits. With the potential wealth, the probability of regionalism emerging as a powerful binding tool may help ASEAN in moving towards joint economic endeavors in this resource-rich area. This regionalism could also be used in encouraging China to solve the dispute peacefully.

China in Settling Disputes

In dealing with its territorial disputes, China has been consistent in maintaining bilateral agreement for the resolution of disputes and the avoidance of international arbitration. While China has maintained of having indisputable claims over the whole South China Sea, there is a possibility that this position can be negotiated. History has

shown that there were instances where China ventured into agreements where it has relinquished some of its claims in the process of settling some of its territorial disputes.

For example, for closer strategic and economic relations, Russia and China formally ended their territorial disputes over Yinlong Island/Tarabarov and Heixiazi Island/Bolshoi Ussuriysky through the signing of an agreement on 21 July 2008.⁶³

Another example is China's compromise over its border agreements with Tajikistan, Kazakhstan, and Kyrgyzstan. In 2011, China and Tajikistan ratified their 2002 border agreement. This was hailed by the Government of Tajikistan as a victory because out of the 28,000 square kilometers of Pamir Mountains area previously claimed by China, Tajikistan only ceded 1,000 square kilometers. Furthermore, in 1998, China received 22% of the land disputed under the border agreement with Kazakhstan. In addition, China and Kyrgyzstan's border agreement in 1996 gave China 32% of the land disputed between the two countries.⁶⁴

One puzzling event, however, was China's submission of its Partial Submission Concerning the Outer Limits of the Continental Shelf beyond 200 nm in the East China Sea to the Commission on the Limits of the Continental Shelf under the UNCLOS in September 2012.⁶⁵ China rejected the Philippines' call for international mediation to solve the existing territorial dispute over the West Philippine Sea but is now invoking UNCLOS in its territorial dispute with Japan. This could be an opportunity for the Philippines in its quest to present the territorial dispute at the UN.

The Philippine Initiatives

The Philippines has initiated diplomatic, political and legal measures with China and other claimant countries to resolve the territorial dispute in the South China Sea.

The Philippine government has been a staunch advocate of a peaceful resolution to territorial rows through a rules-based approach under the provisions of the UNCLOS. It is the 11th country to ratify UNCLOS through Batasan Resolution No 121 enacted in 1984.

On April 2009, then President Gloria Macapagal-Arroyo signed into law Republic Act No. 9522, or the Philippine Archipelagic Baselines Law, which defines the “general configuration” of the archipelago, including the extended continental shelf (ECS) and EEZ, to make it more compliant with the UNCLOS.⁶⁶ The law treats KIG and Scarborough Shoal as part of a “regime of islands”.⁶⁷ Moreover, the legislative enactment of PD 1596 has confirmed the inclusion of the KIG in the Philippine territory

To address the issue on territorial disputes, the Philippine government is engaging all claimant countries for a peaceful resolution of the problem. The Philippines has been consistent in affirming its rights over the claimed territory through confidence-building measures (CBMs) with other parties to include security talks and the proposed establishment of a legally binding Code of Conduct.

As part of the Philippines’ diplomatic approach to this dispute, President Aquino addressed the issue in his remarks before the Council of Foreign Relations in New York in September 2010 that ““it is in the best interest of the region to transform this potential flashpoint (South China Sea) into a Zone of Peace, Friendship, Freedom and Cooperation (ZOPFF/C) through sustained consultation and dialogue.”⁶⁸ The concept of the ZOPFF/C is “to define, clarify, and segregate, in accordance with the UNCLOS, the disputed and non-disputed areas of the West Philippine Sea”.⁶⁹

A key component of the Philippines' diplomatic efforts is its support of the ASEAN initiatives and mechanisms for the preservation of regional peace and development. The Philippines has been consistent in pushing for a multilateral approach to solve the differences among claimants. By forging stronger security alliances with other ASEAN members and other countries to peacefully solve the disputes, the Philippines has been persistent in its call to pre-empt offensive military solutions or provocative measures that would undermine peace and security in the region.

To promote regional cooperation specifically on economic affairs such as joint oil exploration activities and other economic development efforts, "President Aquino called for peaceful sharing of resources of Spratly Islands during the 17th Summit of the ASEAN in Hanoi, Vietnam" held last 28 October 2010.⁷⁰

Moreover, the Philippines has taken up a defensive posture amidst the increased tension in the South China Sea. It has been reported that 26 intrusions made by foreign vessels and poachers in the Philippine territory were left unchecked for the first quarter of 2012 alone.⁷¹ In view of this, the Philippine military is acquiring armaments to protect and preserve the nation's sovereignty and territorial integrity. The dispute has driven the Philippines to pursue the modernization of its military. In 2011, funds were released to support the territorial defense capabilities of the Philippines.⁷²

The Philippines is also leveraging on its defense relations with the United States. The Balikatan exercises between the U.S. and the Philippines are being conducted to enhance interoperability between the two military forces and to maintain operational readiness. Further, the joint military exercises with the U.S. aims "to build a minimum credible defense posture for the Philippines, and increase its capacity for territorial

defense, maritime security, maritime domain awareness, and humanitarian assistance and disaster response”.⁷³

Aside from the diplomatic and political initiatives, the Philippine government also undertook unilateral measures to strengthen its position on the territorial dispute. On September 05, 2012, President Benigno Aquino III signed Administrative Order (AO) 29 which renamed portion of the South China Sea within its 200nm EEZ as the West Philippine Sea.⁷⁴ Thus, the West Philippine Sea is composed of the Luzon Sea as well as the waters around, within and adjacent to the KIG and Bajo De Masinloc, also known as Scarborough Shoal. This is an attempt to solidify the Philippines’ foothold in its claim to the Spratlys and Scarborough Shoal.

Another unilateral initiative was the backchannel negotiations done in September 2012 by a member of the Philippine Senate with Chinese officials in Beijing in the hope of reaching a resolution to the territorial row at the Panatag (Scarborough) shoal.⁷⁵ The negotiations were clandestine and were authorized by the Philippine President. Unfortunately, this initiative did not meet with favorable results since many Philippine political leaders were against it.

Analysis of Initiatives

Though ASEAN is currently less than united, the regional bloc remains an important arena in promoting common interests and in crafting important initiatives to arrive at agreeable solutions. It is an important stage where the Philippines shares its hopes and aspirations for the peaceful resolution of territorial disputes. The Philippines can be given credit in its persistence in sending the message through ASEAN and the international community that it will continue to take its stand in defending its territory

even though the naval power of the Philippines may pale in comparison with the naval power of China.

The enactment of PD 1596 which confirmed the inclusion of the KIG in the Philippine territory and the signing into law of RA 9522 known as the Philippine Archipelagic Baseline Law have only established domestic laws that can be challenged before the U.N. These laws require U.N. or international recognition before the Philippine government can invoke any rights that these laws can provide to the Philippine government. Since the areas covered by these laws are subject to claims by other countries, other claimant countries may not recognize these domestic laws as legally effective until they passed U.N. recognition.

The limited resources of the Philippines could not cover all capability requirements needed to address the present day challenges in patrolling and securing its claimed territories. That being said, the Philippines enjoys strong military relations with the United States through the 1951 Mutual Defense Treaty and the 1999 US-Philippines Visiting Forces Agreement. Toward this end, the Philippines is relying on the U.S. to counter-balance the rising power of China in the region through various military to military engagements and defense capability upgrade programs. However, the level of commitment of the U.S. in support of the Philippine government over the territorial disputes cannot be ascertained since the US has declared its neutrality on the issue. Moreover, there is no clear and declared U.S. policy that the U.S. would defend Philippine military units in the South China Sea against Chinese aggression. In the same manner, any involvement of the U.S. in the South China Sea territorial dispute

would surely add up to the “many difficult conflicts of interest between the U.S. and China.”⁷⁶

At the same time, the Philippines has limited defense capability to protect its sovereignty and territorial integrity. The Western Command is the primary Philippine military unit mandated to guard the country’s EEZ against foreign intrusions as well as to protect oil explorations through naval patrols, intelligence, and aerial reconnaissance. However, this unit suffers from inadequacy of air and sea power assets since its activation in 1976.⁷⁷

Further complicating the issue is China’s assertiveness and its adherence to a bilateral approach as a means of solving the disputes. This is contrary to the efforts of the Philippines which is advocating a rules-based and multilateral approach to solve the dispute. The differences in approach in settling the dispute is thus far the biggest challenge that has to be resolved by ASEAN and China.

Another initiative of the Philippines that caused temporary setback was the bilateral backchannel efforts to find a diplomatic solution to the dispute with China.⁷⁸. These efforts ran contrary to the previous stand of the Philippines on solving the dispute multilaterally. Any attempt to resolve the dispute without transparency could potentially cause suspicion and mistrust within ASEAN. A divided ASEAN would weaken the foundation of a multilateral approach in settling the dispute.

Additionally, the unilateral action in renaming the disputed territory as West Philippine Sea may have caused more harm than good with regard to the ongoing problem. This move has already been strongly criticized by China and Taiwan. A leading state paper of China said that the name change was a “reckless decision that

inevitably caused tension to flare between the Philippines and China.”⁷⁹ Taiwan, on one hand, said that it “does not recognize the unilateral move and urged other claimants to exercise self-restraint so as not to affect peace and stability in the region.”⁸⁰ There is always a risk for a unilateral action to run counter to the principle of multilateral approach as advocated by the Philippines.

Recommendations

China’s assertiveness and rising military power is causing serious security concerns in the region particularly for the Philippines. The ongoing modernization of the armed forces in the region as well as the U.S. re-balancing strategy in the Asia-Pacific region is making the area a military powerhouse that could lead to miscalculations and accidents.

To maintain peace and stability in the Spratlys, the Philippines must continuously pursue its foreign policy decisions in the context of ASEAN and must utilize multilateral and inter-regional organizations to promote common interest.⁸¹ The Philippines must continually urge ASEAN member states to maintain ASEAN centrality and to be united on all issues of common concern. It must urge all concerned parties including China, to transform the region into a Zone of Peace, Freedom, Friendship and Cooperation (ZOPFF/C) and support the pursuit of a legally binding Code of Conduct (COC) in the region.

Second, the Philippines must collaborate with the ASEAN members to strengthen the security alliances of ASEAN and other regional players such as Japan, Australia and the U.S. that share the same view on regional security to pre-empt military and provocative measures. The complexity of the maritime disputes underscores the

importance of unity among ASEAN members and in making ASEAN a reliable bloc that can make decisions to ensure peace and stability in the region.

Third, to address the alarming aggressiveness of China, the Philippines must continuously internationalize the territorial dispute with China, putting forward a position consistent with its national interests. Meaning, the Philippine government must raise the issue before the U.N. and engage the international community, non-government organizations and leaders of nations who will be affected by the dispute to gain international attention. This unification of purpose would help build a coalition of nations with one voice against the use of force in such disputes and send a strong signal to China that the international community desires a peaceful resolution of the territorial row. A strong coalition of free nations supported by the U.N. would pressure China to adhere to the established international conventions in settling territorial disputes. With a strong coalition of nations demanding a peaceful resolution of conflict, there is reason to believe that China would not risk being politically isolated by the international community. As the former Philippine National Security Adviser Jose Almonte recently wrote, “No one can stop China from claiming ‘indisputable sovereignty’ over the South China Sea—except China itself, or the authoritative power of world opinion.”⁸²

On the other hand, the Philippines must continuously pursue the ASEAN multilateral approach of settling disputes with Vietnam, Malaysia and Brunei. These nations are ASEAN members that give primacy to ASEAN centrality in the settling of territorial disputes based on international law and ASEAN interests.

Fourth, the Philippines must fast-track the modernization program of its armed forces to have a credible force and to be able to increase its presence in the areas of

KIG and Bajo de Masinloc. Additionally, this program would encourage plans for an effective and efficient response to incidents at sea. Not intending to cause offensive actions, the Philippines must have a reliable defensive posture to ensure that the KIG is protected from any foreign incursions.

In its quest to protect freedom of navigation, it is in the interest of the United States to have reliable partners in the region while the Philippines needs the support of the United States to better address maritime security issues. It is in this situation where the Philippines' relationship with the United States is undeniably an important factor in protecting its sovereignty. The formidable defense relation of the Philippines and the United States rests in the 1951 Mutual Defense Treaty as well as the Visiting Forces Agreement of 1999 which increased military cooperation between the two countries. The annual Balikatan Exercises facilitate the military presence of the U.S. in the Philippines which could help stabilize escalating confrontations in the region.

Fifth, the Philippines must continuously engage China to ease the tensions brought about by the territorial dispute. It must always keep its diplomatic communications with China open to avoid misperceptions on the intentions of the Philippines that would lead to military miscalculations. Engaging China would facilitate the maintenance of China-Philippines diplomatic and economic relations.

Sixth, as a responsible member of the international community, the Philippines must exhaust all confidence-building and conflict-prevention measures to make sure that the territorial dispute with China will not result in a military collision of powerful nations at sea. Simply put, the Philippine government must be cautious in its actions so as not to spark a "hegemonic war"⁸³ between the U.S. and China.

Seventh, the Philippines must be prudent in making unilateral actions. The renaming of the disputed territories as the West Philippine Sea has caused tension among major claimant countries. The Philippine government must not forget that it is advocating for the settlement of the issue based on international law. Renaming said territory as the West Philippine Sea may preempt the decision of the U.N. or the International Tribunal for the Law of the Sea (ITLOS).⁸⁴ Hence, the Philippines must not make any move that would unnecessarily heighten tension in the region.

Lastly, the Philippine government must abandon the bilateral backchannel approach to avoid misinterpretation by the ASEAN members of the Philippines' sincerity in resolving the territorial dispute through a multilateral approach. The Philippine government must always be transparent in its actions and continuously cultivate trust and respect with the ASEAN members. During these difficult and trying times, it is important that ASEAN must strengthen multilateral efforts to help each other and that its unity be preserved.

Conclusion

The overlapping maritime dispute will continue to make the South China Sea a source of tension unless agreeable and manageable solutions can be reached by the claimant countries especially China and the Philippines. The economic and strategic importance of the islands motivates claimant countries to be resolute in their stand and to solidly affirm their ownership over the Spratly Islands. The maritime disputes have shaken the relations of the claimant countries and the international community for the past decades, and the current aggressiveness of China further complicates the

problem. The shaky diplomatic relations and history of military skirmishes highlight the need for a peaceful resolution of the disputes in the South China Sea.

The territorial ambitions and aggressiveness of China is a challenge to the efforts of the other claimant states in finding a solution to the dispute because of its desire to solve the dispute bilaterally. The relationship of the Philippines and China will continually be marred by suspicion because of the existing maritime dispute and Philippines' close affiliation with the United States which China sees as a rival in the region.

The ASEAN, as a regional bloc, would be of great help if as a group, it would take a unified stand in solving the dispute. The concerned parties must reconcile their differences to finally arrive at a compromise that would ease the tension and resolve the territorial issue. Among the concerns requiring urgent action to avoid armed conflict are the immediate conclusion of the Code of Conduct and avoidance of unilateral actions by the claimant countries that further escalate existing tensions.

Continued provocations in the disputed territories could ignite military skirmishes in the South China Sea. With the military build-up in the region, any miscalculation could spark unprecedented confrontations. Thus, concerned parties must work together to control and keep things at a level that does not threaten their respective national sovereignty, disrupt regional stability, or cause international repercussions. Claimant countries could sidestep sovereignty and instead identify areas of disputes and enter into joint development agreements or arrangements.

In view of the foregoing, it cannot be denied that the Philippines is facing serious maritime security challenges and it must address said challenges that affect its territorial

integrity and sovereignty. Therefore, the Philippines must help contribute to the preservation of peace and stability in the Spratly Islands while continuously asserting its claim on the KIG and Bajo de Masinloc. As President Aquino puts it, “what is ours is ours, and with what is disputed, we can work towards joint cooperation.”¹⁸⁵

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⁷⁸ Camille Diola, "Trillanes: JPE 'blundered' in Brady notes," *Philippine Star Online*, September 24, 2012, <http://www.philstar.com/nation/article.aspx?publicationsubcategoryid=63&articleid=852326> (accessed on 30 September 2012).

⁷⁹ Tarra Quismundo, "Name change a "reckless decision" says China paper," *Philippine Daily Inquirer*, September 15, 2012.

⁸⁰ AFP, Dellon Porcalla, Pia Lee-Brago, "Taiwan slams PHL Sea order; China installs markers," *The Philippine Star*, September 4, 2012.

⁸¹ "Philippine Foreign Policy," Department of Foreign Affairs, <http://www.dfa.gov.ph/main/index.php/about-the-dfa/philippine-foreign-policy> (accessed 02 June 2012).

⁸² Marites Vitug, "PH-China: It's all about the rule of law," January 25, 2013, <http://www.rappler.com/thought-leaders/20391-ph-china-it-s-all-about-the-rule-of-law> (accessed 01 February 2013)

⁸³ Hegemonic war is defined as “a war between the dominant power and the challenger(s) if they cannot settle their differences in peaceful ways. It is the primary means great powers use to resolve the differences in their relations or to create a new international order”. Lai, *The United States and China in Power Transition*, 7.

⁸⁴ “The International Tribunal for the Law of the Sea is an independent judicial body established by the United Nations Convention on the Law of the Sea to adjudicate disputes arising out of the interpretation and application of the Convention.” The Tribunal, *International Tribunal for the Law of the Sea*, <http://www.itlos.org/index.php?id=15&L=0> (accessed 12 December 2012).

⁸⁵ Philippine Paper on ASEAN-China Zone of Peace, Freedom, Friendship and Cooperation (ZoPFF/C) in the WPS (SCS), http://southchinaseastudies.org/en/database-on-south-china-sea-study/doc_details/182--philippine-paper-on-asean--china-zone-of-peace-freedom-friendship-and-cooperation-in-the-scs (accessed 18 Nov 2012)

